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Supreme Court, U.S.
FILED

97 819 NOV 17 1997

OFFICE OF THE CLERK

No. ~~A 209~~

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

BERNARDINE GREENE -- PETITIONER

VS.

ALAN GREENBERG, D.P.M. et al-

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

PETITION FOR WRIT OF CERTIORARI

Bernardine Greene

70 Parkview Drive

Succasunna, New Jersey 07876

973-584-6326

40pp

QUESTION PRESENTED:

Whether the Superior Court of New Jersey, Appellate Division, violated petitioner Greene's procedural due process rights under the United States Constitution when the Court dismissed her appeal when petitioner had neither submitted an appeal brief nor been given a due date to submit the brief. She was in the process of moving for reconsideration of her motion for leave to appeal to the Supreme Court of N.J. and had moved for a stay of appellate proceedings. Her appeal was dismissed on the same date that her motion for reconsideration of a stay of appellate proceedings was denied. Continuing to perfect her appeal by complying with the Court's final decision on the stay was made impossible by the granting of the crossmotion for dismissal.

LIST OF ALL PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

ALAN GREENBERG, D.P.M.

OPTIMUM PHYSICAL THERAPY CENTER

LISA TEN EYCK, PHYSICAL THERAPIST

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CASES and PAGE NUMBERS WHERE CITED

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- Thompson vs. Housing Authority, 782 f.2d 831 (9th Cir.) cert. denied, 479 U.S. 829, 107 S.Ct.112,93 L.Ed.2d 60(1986)
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- Wanderer vs. Johnson, 910 F.2d at 652 (9th Cir. 1990)
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition

JURISDICTION

For cases from state courts:

The date on which the highest state court decided my case was April 24, 1997. A copy of that decision appears at Appendix C

A timely petition for rehearing was thereafter denied on the following date: June 18, 1997, and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including November 17. 1997 on September 9, 1997 in Application No. A-203 and appears at Appendix E.

The Jurisdiction of this Court is invoked under 28 U.S.C. 1257(a)

STATEMENT OF CASE

Petitioner, Bernardine Greene, brought an appeal, pro se, against a doctor of podiatric medicine and a physical therapy center/therapist in an action arising out of medical malpractice. The trial concluded with the jury unanimously finding the doctor negligent as charged[1] but not finding this negligence to be the cause of the liability (the neurological disease known as Reflex Sympathetic Dystrophy Syndrome or 'RSD').

Petitioner filed an appeal 7/25/95, intending to prove that the proximate cause of the liability could only have been the proven negligence and that the

---

[1] Charge taken from Transcript of Proceedings April 11, 1995 Vol.VIII of X p 8.132 '....plaintiff contends that Dr.Greenberg negligently injected her with cortisone resulting in the development of....RSD'

verdict was inconsistent with the trial evidence concerning the liability and its proximate cause and had occurred primarily because of plain error, especially with regards to the jury verdict form (Appendices G & H: verdict form and proposed issues).

Due to the very limited focus of this appeal, any testimony concerning damages, all of which occurred a year or more after the liability, was irrelevant. Starting on 8/25/95, petitioner directly corresponded with her adversaries requesting their permission to allow her to exclude certain costly and lengthy testimony concerning damages. Defendant Greenberg's attorney did not respond. Defendant Optimum Physical Therapy Center's attorney responded denying

petitioner's request simply stating that all the transcripts were 'necessary'. However, he neither submitted argument nor supporting documentation to show how, specifically, the named transcripts were relevant to the very limited scope of her appeal.

Petitioner wrote again to the defense attorneys to 1) attempt to get some response from defendant Greenberg's attorney and 2) to get defendant Optimum's attorney to address her specific allegation. After she did not receive a response from either defense attorney, petitioner spoke with her case manager and then motioned the Court on 10/26/95 for permission to abbreviate transcripts.

During the two months that petitioner had corresponded directly with her

adversaries regarding omitting certain transcripts, she demonstrated her intent to handle her responsibilities in a timely manner. She 1) filed a motion for oral argument, 2) submitted most of her appeal issues, 3) procured and made copies of the transcripts and sent all required copies to the court and her adversaries EXCEPT for those transcripts she sought to omit.

The next year (10/95-10/96) was spent on the process of seeking permission from the Court to omit testimony irrelevant to the appeal. Petitioner conscientiously pursued this issue, always consulting with her case manager regarding correct procedure.

Petitioner's motion to abbreviate transcripts, or in the alternative a

limited remand, although not contested, was denied in all respects in an order filed almost 2 months after her motion was filed. (Appendix I)

In addition to the fact that the process of motioning the court is extremely time-consuming[2], this issue went on as long as it did because, rather than address petitioner Greene's <u>specific allegation</u>, her adversaries used methods to mislead and confuse, intentionally causing unnecessary delay.

Petitioner consistently <u>tried</u> to get her adversaries to address her specific allegation that the testimony she moved to omit was irrelevant to the appeal because the testimony dealt only with

---

[2] it took 5 months for the Supreme Court of N.J. to reply to the 5/10 motion for leave to appeal

damages and their proximate causes and her appeal dealt only with liability and its proximate cause.[3] Her adversaries, instead:

- avoided addressing this one very specific allegation
- introduced and argued issues irrelevant to the specific allegation and supported these arguments with documentation relevant to damage issues and their proximate causes

Because the defense attorney chose to mislead, the Court was clearly confused when they decided to deny petitioner's motion for reconsideration since their

---

[3] 'I implore your Honors to require that my adversary support his net allegation with specific fact to show in what way the testimony I want to omit is relevant specifically to the proximate cause of RSD.' (page 12 of appellant's motion for reconsideration of dismissal)

stated reason for denial (Appendix J) was untrue in this case.[4]

It was only this one time, in regards to this 3/7/96 motion, that petitioner failed to comply with an explicit court order and this was an honest and understandable error due to her very limited pro se experience at that time[5].

After receiving this denial, petitioner spoke with her case manager and, as a result, moved for leave to appeal to the Supreme Court of N.J. to continue to attempt to gain permission to omit transcripts.

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[4] 'proximate cause' and 'damages', in this case, are not mutually exclusive as claimed by the Appellate Court since the testimony moved to omit dealt with damages and their proximate causes

[5] petitioner misunderstood the second paragraph in the supplemental and did not know she had been given the limited remand she had requested

After petitioner filed her motion for leave to appeal, the following events occurred:

- On 5/25/96 petitioner's case manager with whom she had dealt for the first 10 months of the appeal left on 'maternity leave'
- On 6/10/96 petitioner was assigned a NEW CASE MANAGER.
- On 7/18/96 petitioner was ordered to file a motion for stay of appellate proceedings[6] and did so.
- After 8/12/96, when petitioner needed to speak with her case manager, she received no reply

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[6]this occurred after petitioner called the N.J.Supreme Court and, based on information received, notified the appellate division that her motion for leave to appeal would not be heard until after the court returned in September

to letters or phone messages[7]

- On 8/31/96 petitioner received a denial for a stay of appellate proceedings
- On 9/10, after many prior attempts to contact her case manager, petitioner was told that the case manager 'left'
- On 9/12/96 petitioner was assigned a NEW CASE MANAGER
- On 9/25/96 petitioner moved for reconsideration and clarification to the denial on stay of appellate proceedings
- On 10/4/96 petitioner received:
    - <u>from the NJ Supreme Court</u>: an order denying her 5/10/96 motion for leave to appeal limiting transcripts

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[7]on 8/13/96 petitioner was told that her case manager was on vacation until 8/19. After this, petitioner wrote and then called several times and got no reply

- from defendant Greenberg's attorney:
  1. opposition brief to her motion for reconsideration of stay of appellate proceedings
  2. crossmotion to dismiss the appeal based on allegations concerning procedural transgressions

Since petitioner's immediate priority was to answer the crossmotion, she 1) moved for an extension of time to file a motion for reconsideration and clarification in response to the N.J. Supreme Court's denial regarding abbreviating transcripts and 2) submitted a brief arguing why the crossmotion should not be granted. The latter was denied and the crossmotion to

dismiss was granted.

Petitioner had understood that if the court denied her request for reconsideration of the stay of proceedings she would be compelled to order the transcripts she had moved to omit and proceed with perfecting the appeal and she would have done so.

However, the order denying reconsideration of stay of proceedings was issued ON THE SAME DATE as the order granting the crossmotion to dismiss, making it impossible for her to proceed unless the court would reconsider their decision to dismiss the appeal.

Petitioner filed a motion for reconsideration and clarification on 11/12/96. In her brief, petitioner made an honest and sincere effort to convince

the Appellate Court to reverse their decision to dispense the ultimate sanction of dismissal.[8]

The Court did not change its opinion and, on 12/11/96, denied the motion in all respects.

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8 '...I assure you that I am not the person my adversaries try to project....I am at a loss as to how to communicate with the Court in response to my adversaries' misleading allegations'...I beg you to please reconsider your decision to dismiss my appeal.. If you instruct me to order the remaining transcripts..., I will do so immediately and move along with this appeal...please, don't take away my opportunity to complete this appeal...' (from 'Conclusion' section of brief)

REASONS FOR GRANTING THE PETITION

Petitioner's procedural due process rights have been violated.

Although petitioner Greene's appeal was of merit and the issues valid and well-supported by trial evidence, she was never permitted to submit an appeal brief and make the detailed arguments supporting the issues on appeal (Appendix H). This situation occurred because the appeal was dismissed, not based on the merits, but on false and unsupported allegations regarding petitioner's 'procedural deficiencies' made by defendant Greenberg's attorney[9]. Although petitioner made only one procedural error in response to any explicit court rule or order, her

---

[9] specific allegations and arguments were submitted by Defendant Greenberg's attorney. Defendant Optimum Physical Therapy Center supported the allegations by submitting correspondence stating they would 'join' Defendant Greenberg

adversary alleged that every procedural action taken by Ms.Greene was negligent.[10]

Petitioner Greene's right to procedural due process was violated and the decision to dismiss was unwarranted and should be reversed.

The United States Supreme Court has recognized that sanctions for procedural defects are limited by due process considerations. The sanction of a court must be "just" and it must be specifically related to the particular 'claim' which was at issue in the order

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10 '...plaintiff's pro se status does entitle her to some...latitude, it does not authorize carte blanche status to disregard all court rules and court orders...plaintiff has repeatedly failed to comply with court rules and court orders.' (excerpts from pages 4 & 11 of defendant Greenberg's attorney's reply to appellant's brief on reconsideration of dismissal)

to provide discovery. Insurance Corp. of Ireland, Ltd. vs. Compagnie des Bauxites de Guinee, 456 U.S. 694, 102 S.Ct.2099, 72 L.Ed.2d 492 (1982)

Federal courts consider five factors in determining whether a dismissal is appropriate for a procedural violation. These factors, as listed in Thompson vs. Housing Authority, 782 f.2d 831 (9th Cir.) cert. denied, 479 U.S. 829, 107 S.Ct. 112, 93 L.Ed.2d 60 (1986), are:

(1)'the public's interest in expeditious resolution of litigation;

(2)the court's need to manage its dockets;

(3)the risk of prejudice to [the party seeking sanctions];

(4)the public policy favoring disposition of cases on their merits; and

(5)the availability of less drastic sanctions.'

"The first two of these factors normally favor the imposition of sanctions, while the fourth factor cuts against a dismissal action. Thus, the key factors are prejudice and availability of lesser sanctions."

Wanderer vs. Johnson, 910 F.2d at 652 (9th Cir. 1990)

It is essential to find an element of prejudice for a sanction as serious as dismissal. The Court of Appeals panel in Wyle vs. R.J. Reynolds Industries, Inc. 709 F.2d 585, 591 (9th Cir. 1983) held that sanctions which interfere with a litigant's claim or defenses violate due process when they are imposed

"merely for punishment of an infraction that did not threaten or interfere with the rightful decision of the case." Delay alone, without a focus on its effects, will not justify dismissal.

In the instant case, petitioner's actions did not prejudice the appellees in any way. There was not even an allegation from appellees that this delay threatened or interfered with the rightful determination of the case. Appellees simply argued that petitioner was taking too long in filing her brief on the merits of the case.[11]

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[11]'The fact is that this appeal has gone on for more than a year and a half without the entire transcript being provided and without a brief being filed ..in support of her appeal.' (page 10 of defendant Greenberg's attorney's reply to appellant's motion on reconsideration of the dismissal)

At worst, petitioner's actions led merely to delay. Although Ms.Greene did nothing intentional to cause delay, the appeal process was delayed by the defense's decision to use arguments intended to mislead and confuse[12].

Thus, it is respectfully submitted that the New Jersey Superior Court, Appellate Division, wrongfully violated petitioner Greene's Federal procedural due process rights by imposing the ultimate sanction of dismissal. This violation was ratified by the New Jersey Supreme Court's decision not to review the case.

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12 In her motion for reconsideration to abbreviate transcripts, appellant alleged that the testimony moved to omit was irrelevant to the appeal since it dealt only with DAMAGES. Her adversary intentionally misled the court by responding that the testimony was relevant because it dealt with 'proximate cause' when he knew it had to do only with proximate cause of DAMAGES

Your Honor, public policy favors disposition of cases on their merits. This case is of merit since the proposed issues are valid and can be supported by trial evidence. However, Ms. Greene's pro se appeal was dismissed, not based on MERITS, but on false and unsupported allegations of procedural negligence. Use of such tactics might be considered fair when all the adversaries are attorneys; they are grossly unfair when an adversary is a pro se litigant. In such a situation, the FACTS, ISSUES & MERITS must take precedence.

Petitioner submits that the only remedy that would rectify this egregious violation of her rights would be for this Court to reverse and remand this matter back to the New Jersey Superior Court, Appellate Division, for the matter to be heard on the merits.

CONCLUSION

The petition for a writ of certiorari should be granted

Respectively submitted,

Bernardine Greene

DATE: 11/14/97

APPENDIX A

ORDER ENTERED IN CONJUNCTION WITH JUDGMENT SOUGHT TO BE REVIEWED

ORDER ON CROSS MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

BERNARDINE GREENE V ALAN GREENBERG DPM
AND OPTIMUM PHYSICAL THERAPY CENTER
ET AL

DOCKET NO. A -006425-94T3
MOTION NO. M -000944-96

CROSS MOTION FILED: OCTOBER 04, 1996
BY: ALAN GREENBERG
ANSWER FILED: OCTOBER 22, 1996
BY: BERNARDINE GREENE

SUBMITTED TO COURT: OCTOBER 28, 1996

MOTION BY RESPONDENT TO DISMISS THE
APPEAL: GRANTED

FILED APPELLATE DIVISION OCT 31 1996

APPENDIX B

ORDER ON REHEARING

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

BERNARDINE GREENE V ALAN GREENBERG DPM
AND OPTIMUM PHYSICAL THERAPY CENTER
ET AL

DOCKET NO. A -006425-94T3
MOTION NO. M -001907-96

MOTION FILED: NOVEMBER 12, 1996
BY: BERNARDINE GREENE

ANSWER FILED: NOVEMBER 22, 1996
BY: ALAN GREENBERG

SUBMITTED TO COURT: DECEMBER 09, 1996

MOTION BY APPELLANT FOR RECONSIDERATION
AND CLARIFICATION: DENIED

SUPPLEMENTAL: The motion is denied in
all respects

FILED APPELLATE DIVISION DEC 16 1996

APPENDIX C

ORDER ON PETITION FOR CERTIFICATION

SUPREME COURT OF NEW JERSEY
C-869 September Term 1996
Case number 43,475

BERNARDINE GREENE, Plaintiff-Petitioner
v.
ALAN GREENBERG, et al.,Defendant-Respondents

To the Appellate Division, Superior Court:

A petition for certification of the judgment A-6425-94 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs

FILED: APR 24 1997

APPENDIX D

ORDER ON REHEARING ON PETITION FOR CERTIFICATION

SUPREME COURT OF NEW JERSEY
M-1420 September Term 1996
Case number 43,475

BERNARDINE GREENE, Plaintiff-Movant,
v.
ALAN GREENBERG, et al.,Defendants.

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration of the petition for certification is denied.

FILED: JUN 18 1997

APPENDIX E

LETTER GRANTING AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI

LETTER DATED: September 9, 1997

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

BERNARDINE GREENE
v. ALAN GREENBERG, et al.

Application No. A-203

Dear Ms. Greene:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on September 9, 1997, extended the time to and including November 17, 1997.

This letter has been sent to those designated on the attached notification list.

Sincerely, WILLIAM K. SUTER, Clerk

APPENDIX F

JUDGMENT following trial ending 4/12/95

Superior COURT, LAW DIVISION, Morris
COUNTY: DOCKET NO. MrsL-713-91
STYLE OF ACTION: Medical Malpractice

Bernardine Greene
vs.
Alan Greenberg, DPM, Optimum Physical Therapy Center and Lisa Ten Eyck,LPTA

HOW ENTERED: JURY VERDICT
DATES OF TRIAL: March 27,28,29,30,31
April 3,4,5,6,7,10,11,12 1995

AGAINST: Bernardine Greene - Plaintiff
IN FAVOR OF: Alan Greenberg, DPM; Optimum Therapy Center and Lisa Ten Eyck, LPTA - Defendants

No cause of action for the plaintiff

DATED 5/22/95

APPENDIX G

VERDICT FORM

NOTE** The jury ceased deliberations after completing questions 1 & 2 and brought in a verdict. The jury of 8 answered questions 1 & 2 as noted below:

1. Was the defendant, Dr.Alan Greenberg negligent, that is, did he deviate from standard podiatric practice?
   Yes 8 No 0 .
   If your answer to this question is 'no'. cease your deliberations and return your verdict at this point.
   If your answer is 'yes' proceed to Question #2.

2. Was the negligence, that is the deviation from standard podiatric practice of defendant, Dr.Alan Greenberg a proximate cause of the development of Reflex Sympathetic Dystrophy (RSD)?
   Yes 1 No 7 .
   If your answer to this question is 'no' cease your deliberations and return your verdict at this point.
   If your answer is 'yes' proceed to Question #3.

3. Was the defendant, Lisa Ten Eyck negligent, that is, did she deviate from standard therapy practice?
   Yes _____ No _____
   If 'no' proceed directly to Question #6 dealing with damages.
   If 'yes' proceed to Question #4

4. Was the negligence, that is the deviation from standard therapy practice of defendant, Lisa Ten Eyck a proximate cause in aggravating or worsening of the development of Reflex Sympathetic Dystrophy (RSD)?
   If 'no' proceed directly to Question #6 dealing with damages.
   If 'yes' proceed to Question $5.

5. If you find that you have found both of the defendants negligent and that their respective negligent conduct proximately caused the incident in question, then you must answer this questions. Taking the combined negligence of those defendants which proximately contributed to the development of Reflex Sympathetic Dystrophy (RSD) as being 100% -- what percentage of such total negligence is attributable to:
   A. Defendant, Dr. Alan Greenberg __%
   B. Defendant, Lisa Ten Eyck __%
   TOTAL:100%

6. DAMAGES: What amount of money would fairly and reasonably compensate the plaintiff, Bernardine Greene for her injuries and losses for:
   Pain, suffering, disability, impairment and loss of enjoyment?$___
   Medical Bills? $___
   Past Lost Earnings? $___
   Future Lost Earnings? $___

APPENDIX H

6 PROPOSED ISSUES TO BE RAISED ON APPEAL

Below is the context of the 6 isssues that were to be argued in the final appeal brief

1 - The preponderance and weight of the evidence regarding the physical condition of the plaintiff's right foot supports the plaintiff's contention that the PROXIMATE CAUSE OF RSD was defendant Greenberg's negligent act of administering a cortisone shot on 2/16/89.

2 - The Court committed plain error by wording the questions on the verdict form in such a way as to create an illogical sequence that was prejudicial to the plaintiff.

3 - The court committed plain error when it failed to specifically define the negligence in question 1 of the verdict form as it had clearly defined the negligence in the charge: that NEGLIGENCE being the cortisone injection. This error allowed the defense to successfully argue, during the J.N.O.V. hearing, that the unanimous jury vote on negligence did not necessarily mean that the jury found that negligence to be the cortisone shot.

4 - The court committed plain error when, in question 2 on the verdict form, it asked the jury to decide separately on proximate cause of the liability, RSDS, after they had found defendant Greenberg negligent in answer to question 1.

5 - The court committed plain error when it decided to allow defendant Greenberg's expert on negligence, an orthopedist, to be presented for the first time, on the day he testified, as an RSD expert and go far beyond the scope of his expert report by giving expert testimony in the area of NEUROLOGY, especially the RARE neurological disease known as 'RSD'.

6 - The judge rushed the verdict when he decided to give the jury the option to rely on their memory rather than re-hear crucial testimony related to PROXIMATE CAUSE OF RSD that they requested to hear 5 hours into deliberations and within 1 hour of one of the jurors leaving to catch a plane.

APPENDIX I

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

BERNARDINE GREENE V ALAN GREENBERG DPM
AND OPTIMUM PHYSICAL THERAPY CENTER
ET AL

DOCKET NO. A -006425-94T3
MOTION NO. M -001556-95

MOTION FILED: OCTOBER 31, 1995
BY: BERNARDINE GREENE
ANSWERS FILED: NONE

SUBMITTED TO COURT: DECEMBER 18, 1995

MOTION BY APPELLANT TO ABBREVIATE TRANSCRIPTS OR IN THE ALTERNATIVE FOR A LIMITED REMAND: DENIED

SUPPLEMENTAL: The motion is denied in all respects

FILED APPELLATE DIVISION DEC 26 1995

APPENDIX J

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

BERNARDINE GREENE V ALAN GREENBERG DPM
AND OPTIMUM PHYSICAL THERAPY CENTER
ET AL

DOCKET NO. A -006425-94T3
MOTION NO. M -003215-95

MOTION FILED: JANUARY 22, 1996
BY: BERNARDINE GREENE
ANSWERS FILED: FEBRUARY 16, 1996
BY: OPTIMUM PHYSICAL CTR

SUBMITTED TO COURT: MARCH 04, 1996

MOTION BY APPELLANT FOR CLARIFICATION
AND RECONSIDERATION: DENIED

SUPPLEMENTAL: The Court notes that the expert testimony sought to be excluded is alleged to relate to issues other than damages, such as proximate cause.

Our denial is without prejudice to an application to the trial court in accordance with R. 2:5-3(c)(2)

FILED APPELLATE DIVISION MAR 7 1996

Supreme Court, U.S.
FILED
DEC 12 1997
CLERK

(2)

No. 97-819

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

BERNARDINE GREENE,

Petitioner,

v.

ALAN GREENBERG, D.P.M.,
OPTIMUM PHYSICAL THERAPY CENTER,
LISA TEN EYCK, P.T.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE NEW JERSEY SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

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16 pp

QUESTION PRESENTED

The question presented is whether plaintiff's failure to abide by a concise and clear procedural New Jersey Court Rule and the resulting dismissal of her appeal for that failure justifies United States Supreme Court review.

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Cherry Hill Dodge, Inc. v. Chrysler Credit Corp., 194 N.J. Super. 282, 476 A.2d 860 (App. Div. 1984). 10

State Highway Commission of the State of New Jersey v. Union Paving Company, 33 N.J. Super. 85, 109 A.2d 424 (App. Div. 1954) 10

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No. 97-819

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

BERNARDINE GREENE,

Petitioner,

v.

ALAN GREENBERG, D.P.M.,
OPTIMUM PHYSICAL THERAPY CENTER,
LISA TEN EYCK, P.T.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE NEW JERSEY SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Plaintiff's petition seeks to convince the Court that her appeal was somehow inappropriately dismissed by the New Jersey Superior Court Appellate Division for the failure to comply with a New Jersey Court Rule. Petitioner, *pro se,* claims that she made only one slight error

that resulted in prejudice to no party.[1] In reaching these conclusions, Petitioner distorts the underlying facts and procedural history. Petitioner simply failed to comply with New Jersey Court Rules by filing no less than twelve applications with the Courts following the jury's verdict.

As detailed below, there is no cause for this Court's intervention or interpretation of New Jersey Court Rules. Without citation to an appropriate factual basis for this Court's review, Petitioner continues to present the same arguments she has presented on multiple occasions to the New Jersey State Courts. Petitioner's rights were not violated by any decision of any court; she alone possessed the ability to perfect her appeal, yet she failed in that endeavor. New Jersey State Courts can adequately police and control their own docket. Petitioner should not now be permitted redress for her own shortcomings in perfecting her appeal of the Trial Court's decision.

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[1] Petitioner also claims that she in no way contributed to delaying this appeal. Rather, she asserts that the 2½ year delay was in large part due to the Court's lengthy consideration of each application. However, this appeal has been fraught with delays occasioned by Petitioner: Petitioner filed two applications with the New Jersey Supreme Court to file her petitions for certification *nunc pro tunc* and one unperfected motion to extend time to appeal; Petitioner filed an application to extend time to file her petition for Writ of Certiorari with this Court. Additionally, Petitioner failed to timely file each of her motions for reconsideration. Even Petitioner's first application to abbreviate trial transcripts was three months out of time. Each delay has resulted from Petitioner's erroneous actions.

ARGUMENT

A. The Petition Misrepresents The Procedural History Of This Action.

Throughout the petition, Petitioner claims that she made only one mistake in the process of her appeal, that she continually abided by New Jersey Court Rules and diligently and responsibly attempted to seek permission to abbreviate trial transcripts. Petitioner has simply misinterpreted and misconstrued the applicable Rules and, despite appropriate oppositions to Petitioner's applications with the Court pointing out the correct procedural obligations of an appellant, Petitioner failed to perfect her appeal.

Petitioner also asserts that it is patently obvious that the Appellate Division judges and New Jersey Supreme Court justices were misled because the transcripts she sought to abbreviate were not necessary for the appeal. Petitioner's assertions are unfounded; Respondents pointed out that the appropriate procedural process would be to make an application to the Trial Court prior to filing an appeal and not to file multiple applications with the Appellate Courts to abbreviate a transcript. Petitioner's claims are simply erroneous and unsupported.

Factually, Petitioner's claim arises out of the alleged negligent treatment rendered to her by Alan Greenberg, D.P.M., and Optimum Physical Therapy Center. Petitioner filed a personal injury action alleging medical negligence. Petitioner claimed that a steroid injection, administered by Dr. Greenberg, led to the development of reflex sympathetic dystrophy ("RSD").

On March 27, 1995, a jury trial commenced in this matter before The Honorable F. Michael Caruso, J.S.C.

Petitioner contended that she developed RSD as the result of Dr. Greenberg's injection and that this caused innumerable damages including a dissolution of her marriage, her loss of employment and serious psychological injuries. Petitioner also offered numerous additional areas of deviation from accepted medical standards on the part of Dr. Greenberg. These included deviations from accepted standards of medical care in the way he kept his office notes, up to the location of the steroid injection. Plaintiff, however, failed to causally relate many of these deviation to an injury. Dr. Greenberg continually denied any negligence or that he precipitated the development of RSD or any other injuries.

At the close of the trial, the jury deliberated and rendered a verdict of no cause for action in favor of all defendants. With regard to Dr. Greenberg, the jury found that he was negligent, but that such negligence was not the proximate cause of Petitioner's disability. Petitioner filed a motion for a new trial, but this was denied with the Trial Court noting that a number of allegations of deviation were not causally related to the injuries. Petitioner instituted a *pro se* appeal on July 25, 1995.

After filing the appeal, Petitioner failed to serve a complete copy of the trial transcripts as required by New Jersey Court Rules and failed to perfect her appeal by filing a Brief supporting her appeal. Rather than moving before the Trial Court to abbreviate the transcript as required by the New Jersey Court Rules, Petitioner filed numerous motions with the Superior Court of New Jersey Appellate Division and the New Jersey Supreme Court in support for her motion to abbreviate the transcripts. Each motion was opposed on the basis that the transcripts were necessary for a consideration of the

proximate cause issues implicated and because Petitioner continually represented to the Court that she was making a "weight of the evidence" argument which requires the appellate judges to canvass the entire record. Additionally, each opposition recounted that appropriate recourse would be to timely petition the Trial Court. Petitioner failed to comply.

Specifically, on October 26, 1995, Petitioner filed her first motion to abbreviate the transcripts.[2] The basis for this and all succeeding motions, according to Petitioner, was that this testimony would prejudice her appeal because it did not concern issues of the proximate cause of RSD. Petitioner continually insisted that the Appellate Division Judges would either be misled or confused if this testimony was permitted to be utilized. The Appellate Division denied this extraordinary relief on December 22, 1995.

On January 17, 1996, Petitioner filed a request for clarification of the previous denial, or, in the alternative, a request for reconsideration. That motion was denied on March 6, 1996. In that Order, the Court specifically noted, "Our denial is without prejudice to an application to the trial court in accordance with Rule 2:5-3(c)-(2)." Notwithstanding this direction, Petitioner filed two applications with the New Jersey Supreme Court for leave to appeal and for leave to appeal *nunc pro tunc*. Although Petitioner's application for leave to appeal *nunc pro tunc* was granted, her application for certification was denied.

---

[2]The testimony Petitioner sought to abbreviate included testimony concerning her psychological condition. Petitioner claims that this is relevant solely to damages which the jury never reached. However, this testimony also revealed that the Petitioner's depression significantly predated her alleged injuries. RSD often occurs because of a pre-existing psychological component.

While the New Jersey Supreme Court motions were pending, Petitioner was directed by the Clerk of the New Jersey Superior Court Appellate Division to either perfect her appeal or file an application to stay the appellate proceedings. On July 29, 1996, Petitioner filed an application to stay the proceedings. Her sole basis for this application was that abbreviation of the transcripts was necessary to perfect the appeal. The motion was denied on August 27, 1996.

On September 24, 1996, Petitioner filed a motion for reconsideration of the August 27, 1996, denial of her motion to stay the appellate proceedings. That motion was out of time and was denied by Order dated October 31, 1996. As Petitioner's appeal had continued for well more than a year without perfection, Dr. Greenberg filed a crossmotion to dismiss the appeal. That application was based on Petitioner's continued attempts to delay the appeal and her lack of compliance with each of the above Court Orders. Petitioner's lack of prosecution and cooperation required dismissal. That application was granted by the Court on October 31, 1996.

Petitioner then filed a motion to extend time to serve a motion for reconsideration with the New Jersey Supreme Court. That application was never perfected. She also filed a motion with the Appellate Division for clarification and reconsideration of the Order dismissing her appeal. That motion was denied by Order dated December 16, 1996.

Petitioner then filed a Petition for Certification with the New Jersey Supreme Court as well as an application to file the petition *nunc pro tunc*. Although the Order to allow the filing *nunc pro tunc* was granted, the application for certification was again denied. Petitioner

then filed an application for a rehearing to the New Jersey Supreme Court. That application was likewise denied on June 18, 1997.

Near the expiration of the ninety days to appeal to the United States Supreme Court, Petitioner filed an application to extend time an additional sixty days to file the within appeal. On November 17, 1997, two and one-half years after filing her appeal, Petitioner filed the within Petition for Certiorari with the United States Supreme Court.

B. Petitioner Misrepresents The Reason Why Her Appeal Was Dismissed.

Petitioner contends that her appeal was dismissed because of Respondent's alleged attempt to mislead the Court. Petitioner simply misunderstood Respondent's immediate oppositions to each and every motion that she filed; each attempted to convey the appropriate procedure for the relief she requested. As will be outlined below, Petitioner never complied with the New Jersey Court Rule she was attempting to utilize. Petitioner made multiple errors which increased the burden on the defense, ignored judicial efficiency and severely prejudiced the rights of Dr. Greenberg.

New Jersey Court Rule 2:5-3(c) provides in pertinent part:

> The transcript may be abbreviated in all actions . . . by order of the *trial judge* or agency which determined the matter on Appellant's motion specifying the points on which the Appellant will rely on the appeal. The motion *shall be filed and served no later than the time of filing and service of the Notice of Appeal* . . . . (emphasis supplied).

The plain meaning of that Rule is that if a Petitioner desires to abbreviate the transcript without the consent of her adversaries, she must move solely before the trier of fact (not the Appellate Division or the Supreme Court) in an effort to abbreviate the transcript. The underlying reason to make the application to the Trial Judge is that following the trial, he or she is in the best position to determine which transcripts are necessary for the appeal. Petitioner never made the appropriate application to the appropriate court. Each and every one of Petitioner's applications was erroneous and patently frivolous.

Furthermore, Petitioner cannot complain that she was unaware that this application should have been made to the Trial Court; in each and every opposition brief, Respondent quoted the Rule and plainly indicated what would be appropriate compliance. Petitioner simply did not understand and/or failed to abide. Petitioner even failed to follow the dictate of the Appellate Division. Petitioner now contends that she did not understand the implication of that Order. Petitioner's feigned ignorance is simply inconsistent with the clarity of the Rule.

Additionally, the Rule provides that the time to file this application is no later than the time for filing the Notice of Appeal. As Petitioner concedes, she filed her appeal on July 25, 1995 and did not file her first application to abbreviate the transcript until the end of October, 1995. This application was untimely and filed with the wrong court. The Respondents have consistently opposed each and every application on the basis that it was inappropriately filed. Petitioner cannot complain that she is or was unaware of how to proceed. Despite her *pro se* status, upon which Petitioner conveniently and consistently relies, Petitioner is still required to follow the New Jersey Court Rules.

Petitioner insists that she attempted to comply with all New Jersey Court Rules. She places the blame for the dismissal of her appeal not on her own misunderstanding, however, but upon Respondent's attempts to clarify the Rules and upon bad advice from her appellate case manager.[3] She asserts that she came to understand that the worst that could have happened during her numerous applications was that the Court could demand that she comply.

However, that is precisely what was done by the Court through each and every Order. By denying Petitioner's applications, the Court directed her to file the transcripts and proceed. Petitioner never complied. Had Petitioner simply filed the complete transcript of the trial, more than 2½ years of expense and delay could have been avoided. Because Petitioner was making a "weight of the evidence" argument, her requested relief was inappropriate. Dr. Greenberg has been forced to expend significant resources in defending each and every one of these patently frivolous applications. There is no greater prejudice. The frivolous motions had to cease. The New Jersey Superior Court Appellate Division, rarely hears interlocutory motions, especially numerous motions for clarification and reconsideration concerning an application which was never appropriately before the Appellate Division in the first instance. Petitioner cannot place blame on the Appellate Division for her own failure to perceive and understand the Court Rules.

Petitioner also argues that she was unaware that the Court had the inherent power to dismiss her appeal.

---

[3] Implicit in this attempt to blame the Appellate Division is that Petitioner, on numerous occasions, contacted and corresponded with Appellate Division clerks *ex parte* in order to secure legal advice for how to proceed. This is inappropriate.

Despite this, Petitioner has indicated that she has a copy of the New Jersey Court Rules and is very willing and able to read the Rules and abide by them. It is clearly stated in New Jersey Court Rules 2:8-2 and 2:9-9 that the Appellate Court has the inherent power to dismiss an appeal. If Petitioner did not understand that those Rules existed, she was certainly aware at the time that the Respondents filed their motions to dismiss the appeal that the relief requested could be secured. However, when that application was filed, Petitioner did not retreat in her argument. She continued vehemently to insist that the transcript should be abbreviated. That was not the point or purpose of the motion to dismiss. The motion to dismiss was based upon Petitioner's continued failure to abide by the New Jersey Court Rules and the Orders of the Appellate Division.[4]

The New Jersey Superior Court Appellate Division has the power to police and control its own docket. Both of the aforementioned Court Rules provide that the Appellate Court can dismiss an appeal based upon Rule transgressions. In *State Highway Commission of the State of New Jersey v. Union Paving Company*, 33 N.J. Super. 85, 109 A.2d 424 (App. Div. 1954), the Court held that "failure to comply with the Rules on appeal is sufficient reason for dismissal of the appeal." 33 N.J. Super. at 89, 109 A.2d at 426. Similarly, in *Cherry Hill Dodge, Inc. v. Chrysler Credit Corp.*, 194 N.J. Super. 282, 283, 476 A.2d 860, 861 (App. Div. 1984), the Court dismissed an appeal due to procedural deficiencies

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[4]It should be noted that Petitioner violated multiple, additional Appellate Rules: Rule 2:6-12 requiring two copies of all pleadings be filed with all parties to the appeal (Petitioner only provided one); Rule 2:11-6 requiring motions for reconsideration be filed within ten days of the initial Order. Petitioner's Briefs and Appendices also did not comply with pertinent Court Rules.

by the plaintiff. As in those cases, Petitioner here failed to comply with the Rules, failed to serve a complete copy of the transcripts and failed to perfect her appeal. Dismissal was the only available remedy as Petitioner did not abide by the previous Orders.

It is respectfully asserted that the Petitioner had more than ample opportunity to have her day in Court and that this opportunity was only lost due to her dilatory tactics in prosecuting her appeal. Dr. Greenberg is entitled to move forward with his life and should not be held in a meritless litigation forever based upon continued attempts to seek inappropriate relief.

REASONS FOR DENYING THE WRIT

The Petitioner's claim that the New Jersey Courts denied Petitioner due process of law does not warrant review by this Court. The decision to dismiss Petitioner's appeal below was a plainly correct application of settled law, does not involve the interpretation of federal law or federal statute and does not represent a conflict between decisions of the State's highest Court and any other Court.

Pertinent to this discussion, United States Supreme Court Rule No. 10 provides:

> Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> . . . (b) a state court of last resort has decided an important federal question in a way that con-

> flicts with another state court of last resort or of a United States Court of Appeals;
>
> (c) A state court or United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with the relevant decisions of this Court.
>
> *A petition for a Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.* (Emphasis added.)

Here, the New Jersey Supreme Court has not decided a federal question, nor is there a question that must be settled by this Court because of a conflict with any other decision. In fact, this petition is solely concerning the New Jersey Superior Court Appellate Division's interpretation of its own procedural Rules and precedents. There is absolutely no basis justifying further review by this Court.

CONCLUSION

For the reasons given above, the petition should be denied.

Respectfully submitted,

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December 12, 1997

(3)

Supreme Court, U
FILED
DEC 17 1997
CLERK

No. 97-819

In The

Supreme Court of the United States

October Term, 1997

BERNARDINE GREENE,

Petitioner,

vs.

ALAN GREENBERG, D.P.M., OPTIMUM PHYSICAL THERAPY CENTER, LISA TEN EYCK, P.T.,

Respondents.

On Petition for Writ of Certiorari to the New Jersey Supreme Court

BRIEF IN OPPOSITION FOR RESPONDENTS OPTIMUM PHYSICAL THERAPY CENTER AND LISA TEN EYCK

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RULE 29.6 STATEMENT

Respondent Optimum Physical Therapy Center is no longer in existence.

STATEMENT OF THE CASE

The New Jersey Appellate Division's decision to dismiss petitioner's appeal is proper and does not warrant review by the Court.

After two and one half years of extensive motion practice, all of which was initiated by the petitioner, none of which addressed the merits of the case and most, if not all, of which was technically or procedurally deficient, the Appellate Division of the New Jersey Superior Court properly exercised its discretion and granted respondents' motion to dismiss petitioner's appeal.

The dismissal of petitioner's appeal did not violate petitioner's due process rights as the Appellate Division decision to dismiss was the result of the Appellate Divisions's correct interpretation and application of Appellate Division Rules. Thus, there is no basis to justify review by the United States Supreme Court.

ARGUMENT

PETITIONER'S WRIT OF CERTIORARI SHOULD BE DENIED AS THE MATTER BEFORE THE COURT DOES NOT WARRANT REVIEW AS IT INVOLVES THE PROPER APPLICATION OF A STATE COURT RULE BY THE STATE COURT.

Petitioner seeks review of the New Jersey Appellate Division decision to dismiss her appeal which was granted based upon petitioner's failure to abide by New Jersey courts rules and for petitioner's failure to timely prosecute the appeal.

This saga commenced following a jury trial on petitioner's

medical malpractice action where the jury found in favor of respondents, Dr. Greenberg, Optimum Physical Therapy Center and physical therapist, Lisa Ten Eyck. Although the jury found that Dr. Greenberg was negligent, the jury also found that Dr. Greenberg's negligence did not proximately cause petitioner's damages. Not understanding that Dr. Greenberg's negligence could be unrelated to the causation of petitioner's alleged damages and convinced that this finding was against the weight of the evidence, the petitioner, as a *pro se* litigant, filed a Notice of Appeal on July 26, 1995.

Although New Jersey Court Rule 2:5-3(c) required petitioner to serve a complete copy of the trial transcript at the time of filing the Notice of Appeal, petitioner did not do so. Convinced that a complete copy of the trial transcript would mislead and confuse the Appellate Division, petitioner embarked on a two and one half year crusade filing motion after motion after motion with the New Jersey courts repeatedly requesting that she be permitted to serve an abbreviated trial transcript.[1] Although these motions were summarily denied, thus requiring petitioner to serve a complete copy of the trial transcript and proceed with the appeal, petitioner never served a complete copy of the trial transcript and never filed an appellate brief. The petitioner chose to continue her crusade regarding the trial transcript issue continuing to the time of respondents' motion to dismiss. Indeed petitioner set forth the need for an abbreviated trial transcript as a basis for the denial of respondents' motion to dismiss. Thus, even in the face of dismissal, petitioner refused to serve a complete copy of the trial transcript and never perfected her appeal by filing a brief.

---

1. Not only was there no likelihood of success on each of these motions, most if not all of the motions were procedurally deficient as set forth in detail in respondent Dr. Greenberg's brief filed with this Court in opposition to petitioner's Writ of Certiorari.

Obviously agreeing with respondents' arguments that petitioner's crusade had gone on long enough and recognizing that petitioner repeatedly failed to abide by the technical requirements of the court rules, the Appellate Division dismissed petitioner's appeal. In dismissing petitioner's appeal, the Appellate Division exercised its right to control and police its docket as provided for in New Jersey Court Rules 2:8-2 and 2:9-9 and supported in New Jersey case law. *See Cherry Hill Dodge, Inc. v. Chrysler Credit Corp.*, 194 N.J. Super. 282, 283, 476 A.2d 860, 861 (App. Div. 1984); *State Highway Commission of the State of New Jersey v. Union Paving Company*, 33 N.J. Super. 85, 109 A.2d 424 (App. Div. 1954).

Thus, under the facts and circumstances of the instant action and following the guidelines set forth in Supreme Court Rule No. 10, there is no basis for the Supreme Court to review petitioner's claim. Specifically Supreme Court No. 10 provides:

> Review on a Writ of Certiorari is not a matter of right, but of limited judicial discretion. A petition for a Writ of Certiorari will only be granted for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> > . . . (b) a state court of last resort has decided an important federal question in a way that conflicts with another state court of last resort or of a United States Court of Appeals;
> >
> > (c) a state court or United States Court of Appeals has decided an important question of federal law that has not been,

> but should be settled by this Court, or has decided an important federal question in a way that conflicts with the relevant decisions of this Court.

> A petition for a Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Petitioner's Writ should not be granted under the facts and circumstances of the instant matter where the Appellate Division properly applied a State court rule investing the Appellate Division with the discretion to dismiss appeals where petitioner repeatedly failed to abide by the court rules and petitioner never perfected her appeal throughout two and one half years of motion practice. Thus, petitioner's Writ of Certiorari should be denied as there is absolutely no basis justifying further review by this Court.

CONCLUSION

For the foregoing reasons, petitioner's Writ of Certiorari should be denied as there is no basis to review the Appellate Division decision to dismiss petitioner's appeal.

Respectfully submitted,

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Supreme Court, U.S.
FILED
JAN 9 1998
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No. 97-819

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

BERNARDINE GREENE -- PETITIONER

VS.

ALAN GREENBERG, D.P.M. et al

RESPONDENTS

REPLY BRIEF

TO RESPONDENTS BRIEFS IN OPPOSITION ~~TO~~ PETITION FOR A WRIT OF CERTIORARI TO

THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

PETITION FOR WRIT OF CERTIORARI

Bernardine Greene

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63pp

QUESTION PRESENTED:

Whether the Superior Court of New Jersey, Appellate Division, violated petitioner Greene's procedural due process rights under the United States Constitution by making a decision that petitioner alleges is unfair because it was based on unethically and maliciously false allegations made by the defense that have not been supported with any form of documented fact.

LIST OF ALL PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

ALAN GREENBERG, D.P.M.

OPTIMUM PHYSICAL THERAPY CENTER

LISA TEN EYCK, PHYSICAL THERAPIST

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APPENDIX E
2/15/96 response brief from co-defendant Optimum (2)

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APPENDIX S
10/8/96 letter from appellant to her newly assigned case manager (12)

TABLES OF AUTHORITIES CITED

AUTHORITIES & PAGE NUMBERS WHERE CITED

- Arnett, 416 U.S. at 167 (Powell, J., joined by Blackman, J., concurring))

  PAGE.....8

- Treastise on Constitutional Law, by Rotunda & Nowack 2nd Ed. Volume 2 1997

  PAGE.....13

- American Surety Co. v. Baldwin, 287 U.S. 156, 168 (1932) (Brandus, J.)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

REPLY BRIEF FOR WRIT OF CERTIORARI

OPINIONS BELOW

SAME AS STATED IN ORIGINAL BRIEF
FOR WRIT OF CERTIORARI

JURISDICTION

SAME AS STATED IN ORIGINAL BRIEF
FOR WRIT OF CERTIORARI

STATEMENT OF CASE

Petitioner developed a neurological disease, Reflex Sympathetic Dystrophy, hereafter referred to as 'RSD'[1], after receiving a cortisone injection. Subsequently she was abandoned by her husband of 19 years, was diagnosed with Major Depression and was forced to resign from a lucrative career and is unemployed and on SS Disability.

A trial followed (Appendix A). The evidence supports the proximate cause of RSD as one of two acts causing injury: the cortisone shot or the subsequent aggressive physical therapy. The jury unanimously found defendant Greenberg negligent but did not find 'the negligence' to be the proximate cause of 'RSD'. At the J.N.O.V. hearing the defense argued that one could not know what the jury believed was 'the negligence'. The Court used this to support its denial which was unfair since the argument was faulty and could have only been made because the Court failed to define negligence on the verdict form (Appendix G) as it had clearly done in the charge (Appendix A).

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1 'RSD' is precipitated by a physical injury, Symptoms of severe pain and dystrophy appear shortly after injury and the disease develops, over time, through stages of increasing disability.

THE APPEAL PROCESS 7/95 - 12/96

Petitioner filed an appeal, pro se and learned that she could omit costly transcripts that were provably irrelevant to issues on appeal. After speaking with her case manager[2] she wrote to the defense (Appendix K) making it clear the testimony she asked to omit dealt with proximate causes of damages and was irrelevant since neither the jury nor the appeal addressed damages.

Defendant Greenberg's trial attorney never responded to any letters during the first six months. Optimum's attorney responded (Appendix L) but did not address Ms.Greene's specific allegation or support his claim. Petitioner replied copying defendant Greenberg (Appendix M) Neither responded and petitioner was forced to motion the Court doing so on 10/26/95, by which time she had submitted 1) all transcripts except those she was seeking to omit[3], 2) a request for oral argument,[4] and 3) most of her proposed issues (Appendix H).

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[2] petitioner did not have a rulebook the first year and relied on her case manager for information on procedures

[3] testimony of 3 witnesses who testified as to the proximate causes of damages

[4] request made 8/31/95 and filed 9/6/75

Although not contested, the motion was denied (Appendix I) and petitioner submitted a motion for reconsideration. On 2/16/96 defendant Optimum's attorney responded with a brief[5] (Appendix E) that intentionally mislead the Court with 'generalizations' about causation. On 2/29/96 defendant Greenberg's lawyer responded for the first time in six (6) months(Appendix F). Mr.Christie, newly assigned, was, the attorney of record for the remainder of the appeal process. Because of a flare up of symptoms and increased disability due to 'RSD' and subsequent illness, [6] petitioner was unable to attend to the appeal for much of March 1996 and part of April 1996. She received a denial on the motion for reconsideration(Appendix J) and, being only the second form she had ever seen, interpreted it as just a denial[7]. In late March she learned that defendant Greenberg's brief was out of time and that the Court's decision was based on defendant Optimum's brief that was never

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[5] a copy was never sent to the appellant

[6] petitioner had a severe worsening of her 'RSD' symptoms leading to increased difficulty in movement and was traveling to see specialists and being sent for many neurological tests.

[7] Petitioner did not have a rulebook and believed the rule stated in the supplemental section was in support of the denial and, therefore, failed to follow the order for a limited remand.

sent to her. On 3/23/96 she sent tapes of testimony she wanted to omit to Mr. Christie[8] (Appendix N). Since the Court's 3/7 denial (Appendix J) was based on an false conclusion[9] based on an intentionally misleading argument[10], petitioner spoke with her case manager sent a confirmation letter (Appendix O).

After receiving a copy of defendant Optimum's 2/16/96 brief, petitioner made a last appeal to Mr. Kundla copying defendant Greenberg (Appendix P).

On 4/2/96 defendant Greenberg's attorney wrote to the Appellate Judges complaining about the appellant, threatening to move for dismissal and copying her but not the case manager. (Appendix Q). Petitioner called her case manager and after this conversation wrote to the Judges (Appendix R).

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[8] It should be noted that defendant Greenberg's attorney states in his 1/24/97 response to petition for certification: 'Although plaintiff did in fact send a copy of the audiotapes to this office, she never once attempted a telephone call'(pg10)

[9] proximate cause and damages are not mutually exclusive, in this case, since the testimony sought to omit concerns the proximate cause of damages

[10] per Optimum's 2/15/96 brief 'the issues on appeal deal with proximate cause..'and 'all testimonies are important for addressing issues of causation and must be included

A few weeks later the case manager left on maternity leave after which defendant Greenberg's attorney ceased arguing 'issues' and argued allegations about petitioner's procedural behavior. All but one of these are false and unsupported by any evidence.

As of mid-9/96 petitioner 1) was assigned a new case manager, 2) was in the process of filing a motion to supplement the record, 3) had not yet been given a date for filing her appeal brief, and 4) had not been heard as per her request for oral argument. Defendant Greenberg's attorney filed a crossmotion to dismiss 10/4/96 based on a plethora of false allegations of procedural errors. Petitioner, concerned about dismissal and being unfairly treated contacted her new case manager (Appendix S) to no avail and the Court summarily dismissed the appeal and denied petitioner's subsequent requests for clarification or reconsideration.

REASONS FOR GRANTING THE PETITION

1. Petitioner's question is appropriate to this Court

Regardless as to what the defense wishes to call it, 'federal question' or 'interpretation of the Court's own procedural rules', the issue here concerns the constitutional due process rights of the petitioner. This case deals with a violation of a constitutional guarantee. The Court wrongfully dismissed this appeal based on unethical, false and malicious allegations made by the defense counsel.

Therefore, the question is properly before this Court since 'the right to procedural due process is conferred, not by legislative grace, but by constitutional guarantee' (Arnett, 416 U.S. at 167 (Powell, J., joined by Blackman, J., concurring))

2. The decision to dismiss the appeal was unfair

Petitioner believed the trial verdict resulted primarily due to plain error. Her appeal issues have merit; they are valid and easily supported by evidence.

Petitioner had the right to appeal and have her arguments supporting the issues heard. The Court unfairly denied her.

Fairness is the most essential element in the due process clause and petitioner was treated unfairly when she

was forced into defending her procedural actions against fabricated allegations which were obviously intended to take focus off the issues and cause delay.

The pro se petitioner had no experience in defending herself against false allegations and had no one to guide her[11]. She had not been given 1) a date to file her appeal brief, 2) a chance to give oral argument, 3) reasonable accommodations for her disabilities[12] (pg2 of Appendix S) nor 4) any explicit order directing her as to what to do, Additionally, the Court denied giving reasons for its decision and Ms.Greene can only make reasonable assumptions, the first being that the Court's decision was not based on the merits of or issues on appeal since the arguments made were based on allegations as to procedural behavior. Therefore, petitioner concludes dismissal was based on procedural errors the Court believed the petitioner made.

If the Court made its decision based on the one actual unintentional mistake petitioner made regarding the limited

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11 After the first case manager left 5/96, petitioner had 3 case managers, the last taking over within 2 weeks of the filing of the crossmotion.

12 after her first case manager left, petitioner was not accomodated so that she could effectively deal with the defense's onslaught of false attacks

remand[13], then this is unfairly harsh considering that petitioner 1) suffered increased disability and illness during that time and deserved to be reasonably accommodated, 2) was understandably confused as to the basis for the 3/7/96 decision since she was never sent a copy of defendant Optimum's 2/16 brief and received a 2/29 brief from defendant Greenberg that she later learned was out of time, 3) misinterpreted the 3/7/96 order on motion form which was only the second form that she had ever seen and which was clearly marked DENIED, and 4) no one brought this honest error to her attention and she did not become aware of it until 5 months later when she read about it in defendant's brief.

On the other hand, if the Court's decision was based on the false and UN-supported allegations regarding Ms.Greene's plethora of` procedural errors, its decision is also unfair.

3. Defense Attorneys acted unfairly, unethically, and irresponsibly:

The defense took unfair advantage of petitioner's pro se status. During the first six (6) months of the appeal no

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[13] Since the petitioner specifically asked for a limited remand on 10/25/95 and on 1/96, it is illolgical and unreasonable to conclude that she intentionally failed to take advantage of it had she known it had been granted .

attorney for Defendant Greenberg responded to the petitioner's many communications and co-defendant Optimum's attorney refused to address her one very simple and specific allegation[14] using irrelevant arguments and misleading allegations obviously for the purpose of delay in order to allow defendant Greenberg's new attorney to get 'up to speed'.[15] Then, when this new attorney, was still unable to grasp the facts of the trial[16] and submitted his first brief out of time, he decided to make false and malicious attacks against petitioner's procedural behavior, blaming her for delay in perfecting the appeal and finally issuing a crossmotion to dismiss. Although Mr.Christie's name no longer appears on the latest brief and has been replaced by 3 attorneys,

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14 that the testimony she wanted to omit had nothing to do with the proximate cause issue in the appeal: THAT OF 'RSD'

15 if the defense needed time because a new attorney had been assigned, they should have contacted the petitioner

16 on page 8, Mr.Christie claims that psychiatric testimony is relevant to the proximate cause of RSD 'because ..RSD is considered by some to have a psychological component' The only component of RSD that is psychological is the severe depression most RSD patients develop beCAUSE of RSD; nothing in the trial evidence hints at RSD being CAUSED by anything psychological.

all of the arguments and allegations clearly have been taken from his previous appeal briefs and contain the same false, unsupported allegations.

As during the appeal process, neither defense attorney submitted any documents to support their allegations.

Petitioner is the only counsel of record who submitted detailed briefs that has been consistently involved in and has first-hand knowledge of all aspects of this case and is well-versed and able to argue the facts. However, prior to acting as her own counsel on the appeal, she had no prior knowledge of Appellate Rules and Procedure. She did not have a rulebook until a year after she filed the appeal and relied on her case manager for information regarding rules and procedure, she did not receive legal advice from her.

The only time petitioner erred and failed to follow an explicit court order or rule was when she failed to pursue the limited remand. Although unfortunate this was honest and understandable.

Throughout the appeal process every one of petitioner's motions were accepted as 'on time' and she made valid and well-documented arguments[17] supporting every allegation she made

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[17] Despite petitioner's honest mistake reagrding the limited remand, it is a fact that the Court changed its original decision and granted the limited remand based on petitioner's argument.

with documentation from the trial evidence. Although defendants allege that petitioner is responsible for the delay in the appeal, it is clear that Ms.Greene never displayed any intention to delay perfecting her appeal. Within the first 3 months she ordered all[18] of the transcripts, copied them and sent them to all parties, requested oral argument and submitted most of her proposed issues. It is obvious most of the delay was, in fact, due to the defense's clearly intentional actions

CONCLUSION

Due process may merely involve the Court's review of the FAIRNESS of a decision. (Treastise on Constitutional Law, by Rotunda & Nowack,Volume 2 1997 p. 355) Due to an unfair decision, petitioner's only right to be heard on the issues was denied. Future arguments will be entertained at the discretion of a system that had already treated her unfairly. Petitioner's procedural due process rights were violated and "due process requires that there be an opportunity to present every available defense"(American Surety Co. v. Baldwin, 287 U.S.156,168 (1932) (Brandus, J.)) Certiorari should be granted in order to afford Ms.Greene the opportunity to re-instate her right to be heard regarding her appeal issues.(Appendix H)

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18 EXCEPT transcripts of the 3 experts whose testimony she was seeking to omit

APPENDIX A

JUDGE'S CHARGE FROM TRANSCRIPT OF PROCEEDINGS APRIL 11, 1995 VOLUME VIII OF X PG 8.132.3

The plaintiff contends that Dr. Greenberg negligently injected her with cortisone resulting in the development of reflex sympathetic dystrophy, referred to herein as RSD, resulting in her injuries and physical disability, and that defendant, Lisa Ten Eyck, negligently treated her and aggravated and worsened the condition created by Dr. Greenberg.

Plaintiff further contends that she had no psychiatric depression prior to the injection of cortisone, and her psychiatric problems, that is, the major depression, was the result of the conduct of Dr. Greenberg and Lisa Ten Eyck.

The defendants, in denying negligence, assert that they were not responsible for the development of reflex sympathetic dystrophy, RSD, and further, that plaintiff had a prior psychiatric condition and thus, they are not responsible for any psychiatric problem, that is, major depression, that plaintiff may have developed.

APPENDIX E

LETTER BRIEF FILED 2/16/96 FROM CO-DEFENDANT OPTIMUM WHO DID NOT SEND A COPY TO APPELLANT

February 15, 1996

Superior Court of New Jersey
Appellate Division CN-006
Trenton, New Jersey 08625
Attention: Ms. Sanda Foss, Team 3

Re: Greene vs. Greenberg, et al

Dear Ms. Foss:

Please accept this letter in lieu of a more formal brief on behalf of respondents Optimum Physical Therapy Lisa Ten Eyck in opposition to appellant Bernadine Greene's motion for reconsideration from the Court's prior order denying appellant's motion seeking permission to file an abbreviated transcript pursuant to Rule 2:5-3 (c).

According to appellant's letter to the court accompanying her motion, she seeks permission to exclude the testimony of three (3) expert witnesses from consideration. Respondent opposes this application. According to appellant, the issues on appeal primarily deal with proximate cause. Dr.Simring testified at trial that plaintiff's psychiatric and emotional conditions were unrelated to the treatment she received by defendants and obviously his testimony is relevant in any determination of proximate cause by the jury. Since Dr. Anekstein was plaintiff's treating psychiatrist and Dr.Simring was called to refute her testimony, obviously Dr.Anekstein's testimony should be included as part of the transcript.

By the same token, plaintiff at trial called Dr.Miller, an expert on vocational training and employability, and Dr. Miller testified as to whether plaintiff's condition caused her difficulty in obtaining and keeping a job.

Obviously all three of these witnesses' testimonies are important for addressing issues of causation and must be included.

For the above mentioned reasons, respondents' oppose appellant's motion for reconsideration of her original motion seeking permission to file an abbreviated transcript.

Respectfully submitted,
Mark S. Kundla

APPENDIX F

DEFENDANT GREENBERG'S ATTORNEY'S COVER LETTER FOR THE 2/29/96 BRIEF THAT WAS DEEMED OUT OF TIME

February 29, 1996

Via Lawyer Service
The Honorable Judges of the Superior Court
Appellate Division

Re: Greene v. Alan Greenberg, D.P.M., Optimum Physical Therapy Center, Charlotte Carey, LPT, Lisa Teneyck,Docket No; A-006425-94T3

Dear Judges:

Plaintiff has filed a Notice of Motion for Reconsideration of the decision denying her motion to abbreviate the trial transcript. Please accept this letter brief in lieu of a more formal brief in opposition to this motion on behalf of defendant, Alan J. Greenberg, D.P.M.

I hereby certify that two copies of the Letter Brief have been forwarded to:

The Honorable F. Michael Caruso
Superior Court, Morrlstown,NJ

Mark S. Kundla, Esq. Bumgardner,
Hardin & Ellis, Springfield, NJ

Bernadine Greene, Pro Se

(SIGNED BY) Christopher Christie
DUGHI AND HEWIT, P.C.
DATED: February 29, 1996

APPENDIX G

VERDICT FORM

NOTE** The jury ceased deliberations after completing questions 1 & 2 and brought in a verdict. The jury of 8 answered questions 1 & 2 as noted below:

1. Was the defendant, Dr.Alan Greenberg negligent, that is, did he deviate from standard podiatric practice?
   Yes 8 No 0 .
   If your answer to this question is 'no'. cease your deliberations and return your verdict at this point.
   If your answer is 'yes' proceed to Question #2.

2. Was the negligence, that is the deviation from standard podiatric practice of defendant, Dr.Alan Greenberg a proximate cause of the development of Reflex Sympathetic Dystrophy (RSD)?
   Yes 1 No 7 .
   If your answer to this question is 'no' cease your deliberations and return your verdict at this point.
   If your answer is 'yes' proceed to Question #3.,

Verdict Brought in here

3. Was the defendant, Lisa Ten Eyck negligent, that is, did she deviate from standard therapy practice?
   Yes _____ No _____
   If 'no' proceed directly to Question #6 dealing with damages.
   If 'yes' proceed to Question #4

4. Was the negligence, that is the deviation from standard therapy practice of defendant, Lisa Ten Eyck a proximate cause in aggravating or worsening of the development of Reflex Sympathetic Dystrophy (RSD)?
If 'no' proceed directly to Question #6 dealing with damages.
If 'yes' proceed to Question $5.

5. If you find that you have found both of the defendants negligent and that their respective negligent conduct proximately caused the incident in question, then you must answer this questions. Taking the combined negligence of those defendants which proximately contributed to the development of Reflex Sympathetic Dystrophy (RSD) as being 100% -- what percentage of such total negligence is attributable to:
A. Defendant, Dr. Alan Greenberg __%
B. Defendant, Lisa Ten Eyck __%
TOTAL:100%

6. DAMAGES: What amount of money would fairly and reasonably compensate the plaintiff, Bernardine Greene for her injuries and losses for:
Pain, suffering, disability, impairment and loss of enjoyment?$___
Medical Bills? $___
Past Lost Earnings? $___
Future Lost Earnings? $___

APPENDIX H

6 PROPOSED ISSUES TO BE RAISED ON APPEAL

Following is the context of the 6 isssues that were to be argued in the final appeal brief

1 - The preponderance and weight of the evidence regarding the physical condition of the plaintiff's right foot supports the plaintiff's contention that the PROXIMATE CAUSE OF RSD was defendant Greenberg's negligent act of administering a cortisone shot on 2/16/89.

2 - The Court committed plain error by wording the questions on the verdict form in such a way as to create an illogical sequence that was prejudicial to the plaintiff.

3 - The court committed plain error when it failed to specifically define the negligence in question 1 of the verdict form as it had clearly defined the negligence in the charge: that NEGLIGENCE being the cortisone injection. This error allowed the defense to successfully argue, during the J.N.O.V. hearing, that the unanimous jury vote on negligence did not necessarily mean that the jury found that negligence to be the cortisone shot.

4 - The court committed plain error when, in question 2 on the verdict form, it asked the jury to decide separately on proximate cause of the liability, RSDS, after they had found defendant Greenberg negligent in answer to question 1.

5 - The court committed plain error when it decided to allow defendant Greenberg's expert on negligence, an orthopedist, to be presented for the first time, on the day he testified, as an RSD expert and go far beyond the scope of his expert report by giving expert testimony in the area of NEUROLOGY, especially the RARE neurological disease known as 'RSD'.

6 - The judge rushed the verdict when he decided to give the jury the option to rely on their memory rather than re-hear crucial testimony related to PROXIMATE CAUSE OF RSD that they requested to hear 5 hours into deliberations and within 1 hour of one of the jurors leaving to catch a plane.

APPENDIX I

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

BERNARDINE GREENE V ALAN GREENBERG DPM
AND OPTIMUM PHYSICAL THERAPY CENTER
ET AL

DOCKET NO. A -006425-94T3
MOTION NO. M -001556-95

MOTION FILED: OCTOBER 31, 1995
BY: BERNARDINE GREENE
ANSWERS FILED: NONE

SUBMITTED TO COURT: DECEMBER 18, 1995

MOTION BY APPELLANT TO ABBREVIATE TRANSCRIPTS OR IN THE ALTERNATIVE FOR A LIMITED REMAND: DENIED

SUPPLEMENTAL: The motion is denied in all respects

FILED APPELLATE DIVISION DEC 26 1995

APPENDIX J

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

BERNARDINE GREENE V ALAN GREENBERG DPM
AND OPTIMUM PHYSICAL THERAPY CENTER
ET AL

DOCKET NO. A -006425-94T3
MOTION NO. M -003215-95

MOTION FILED: JANUARY 22, 1996
BY: BERNARDINE GREENE
ANSWERS FILED: FEBRUARY 16, 1996
BY: OPTIMUM PHYSICAL CTR

SUBMITTED TO COURT: MARCH 04, 1996

MOTION BY APPELLANT FOR CLARIFICATION
AND RECONSIDERATION: DENIED

SUPPLEMENTAL: The Court notes that the expert testimony sought to be excluded is alleged to relate to issues other than damages, such as proximate cause.

Our denial is without prejudice to an application to the trial court in accordance with R. 2:5-3(c)(2)

FILED APPELLATE DIVISION MAR 7 1996

APPENDIX K

APPELLANT'S 8/25/95 LETTER TO DEFENSE ATTORNEYS ASKING TO LIMIT TRANSCRIPTS

Mr. Robert Donnelly, Esq
c/o Doughi & Hewit
340 North Ave.
Cranford NJ 07016

August 25, 1995

Re: Docket # A-006425-94T3
Greene vs Greenberg, et al.

Dear Mr. Donnelly,

As you are aware, I am handling my appeal on my own. I am doing this due to financial constraints.

In order to conserve money, I have excluded ordering some of the transcript of my trial.

Since my appeal involves issues that have to do with 'cause', and have nothing to do with assessing damages, I did not order any transcripts that had to do with damages.

These transcripts cover the testimony of witnesses who were questioned regarding my mental state and my job performance before and after 2/16/89 when Dr. Greenberg gave me a cortisone injection. I do not intend to rely on any of the following testimony in addressing the proposed issues raised on this appeal:

- Dr. Simring
  psychiatric expert for defense
- Dr. Anekstein

psychiatric expert for plaintiff
- Dr. Miller
Employment expert for plaintiff

I am writing to you with a copy to Mr. Kundla in order to get your and his 'OK' on my decision not to order transcripts on the above-listed testimony.

Please advise me regarding this issue.

Sincerely,

Bernardine Greene
70 Parkview Drive
Succasunna, NJ 07876 201-584-6326

cc: Mr.Kundla Bumgardner Hardin & Ellis
Sandra Foss, Team 3 Applellate Div.

APPENDIX L

CO-DEFENDANT OPTIMUM'S RESPONSE TO APPELLANT'S 8/25/95 LETTER

October 4, 1995
Re: Bernardine Greene v. Alan Greenberg
Docket No. A-006425-94T3

Dear Ms. Greene:

I am in receipt of your letter requesting consent to the ordering of an abbreviated transcript of the trial before Judge Caruso in Morris County, pursuant to Rule of Appellate Procedure 2:5-3(c)(1).

While sensitive to your pro se status and desire to conserve financial resources, I cannot consent to an abbreviated transcript in this matter on behalf of my clients, Optimum Physical Therapy Center, Lisa Ten Eyck and Charlotte Carey. In order to provide the appellate court with a complete understanding of the proceedings before the trial court, I believe it is necessary that the transcripts of all testimony be available for the court's review and for use by the appellants in the appellate briefs.

Therefore, I cannot agree to your request for consent to file an abbreviated transcript.

Very truly yours,
Mark S. Kundla
cc: Robert Donnelly, Dughi and Hewit
Sandra Foss, case manager Team 3

APPENDIX M

APPELLANT'S RESPONSE TO MR.KUNDLA'S 10/4/96 LETTER

Mark Kundla
Bumgardner, Hardin & Ellis
673 Morris Avenue
Springfield, N.J. 07081-1592

October 10, 1995

Re: Docket # A-006425-94T3
Greene Vs Greenberg, Optimum
Physical Therapy Center et al.

Dear Mr. Kundla,

I was surprised and disappointed to receive your 10/4 letter today stating that you were unwilling to consent to my request to omit ordering transcripts that have nothing to do with the proposed issues raised in my appeal.

Your stated reason for your decision is to provide a complete understanding of the proceedings to the court in behalf of your clients, Optimum Physical Therapy et al.

In this trial the plaintiff's position was that defendant Greenberg was negligent in administering a cortisone injection to the arch area of her right foot CAUSING her to develop the rare neurological disease of Reflex Sympathetic Dystrophy Syndrome (RSDS). She further contended that your client's (Optimum Physical Therapy Center et al) treatment aggravated or worsened the RSDS condition.

Per the court's instuctions (Jury Verdict Form; #2); if the jury did not find defendant Greenberg the proximate cause of the development of the plaintiff's neurological disease Reflex Sympathetic Dystrophy Syndrome (RSDS), the jury was to cease deliberations. They were not go on to consider any of the questions regarding your client's negligence nor were they to consider damages at all.

The jury unanimously found defendant Greenberg negligent BUT they did not find him the proximate cause of the RSDS.

The proposed issues in this appeal deal either with PROXIMATE CAUSE of RSDS or decisions made by the court which I believe were prejudicial. It is my intention to deal only with testimony that relates to these issues.

Mr. Kundla, as you know this trial lasted 2 1/2 weeks and the jury deliberated about 8 hours. Since the jury verdict form shows that the jurors stopped after item #2, it is obvious that they never got to consider your client's negligence or any DAMAGE issues.

In dealing with these DAMAGE issues, the defense and the plaintiff brought up many witnesses to testify. None testified regarding their knowledge of the disease of RSDS and its proximate cause...

I don't see the logic in your reasoning for needing these transcripts. This testimony had no bearing on any of my

proposed issues. In addition, the...testimony in no way enhances the understanding of my claim in regards to your client: that claim being that your client aggravated or worsened my condition of Reflex Sympathetic Dystrophy Syndrome.

I find it both unproductive and a waste of the judges' time to include any of the testimony relating specifically to damages. This testimony will only confuse the narrow issues being presented to the court and add to the confusion already inherent in the ordered transcripts concerning the rare neurological disease of Reflex Sympathetic Dystrophy Syndrome (RSDS) and its proximate cause. I do not believe justice is served by the inclusion of this testimony.

I strongly disagree with your reasoning in support of your decision that I need to order a complete set of transcripts. Ordering these and making all the necessary copies would serve no purpose other than causing me undue and unnecessary financial hardship and possibly give you an opportunity to use information to confuse the real issues in this appeal.

If you insist on maintaining this position I will take my argument to the court for determination on these transcripts.

Sincerely,
Bernardine Greene (Pro se)
cc: Robert Donnelly, Jr. Doughi & Hewit
Sandra Foss, Team 3, Appellate Div.

APPENDIX N

APPELLANT'S 3/23/96 LETTER TO DEFENDANT GREENBERG'S ATTORNEY

Mr. Christopher Christie
c/o Dughi and Hewit
340 North Ave
Cranford, New Jersey

March 23, 1996

Re: your file #4051;
CERTIFIED MAIL #P 234 806 121
Appellate docket# A-006425-94T3

Dear Mr. Christie,

I would like to get on with the real focus and issues of this appeal and dispense with further time spent on testimony regarding issues IRRELEVANT TO THIS APPEAL.

The jury unanimously found your client negligent in giving me a cortisone injection. However they did not find this negligence the PROXIMATE CAUSE OF MY RSD. This is the basis for all the issues in my appeal: THE PROXIMATE CAUSE OF RSD.

The testimony I wish to exclude does not comment at all on the proximate cause of RSD, but on the proximate cause of damages I claim were a RESULT OF RSD; break-up of 20 year marriage, major depression, and loss of job/career.

RSD is not caused by anything psychological. Nowhere in the testimony during the entire trial was it ever suggested that RSD is caused by anything psychological. My psychological history is just NOT relevant to the proximate cause of RSD

For your clarification and assurance that none of the testimony I wish to exclude has any relevancy to the PROXIMATE CAUSE OF RSD, I enclose a copy of the following court-recorded testimony which I copied in total from tapes I purchased from the court:

4/4/95 of Dr.Anekstein and Dr.Miller
4/7/95 of Dr.Simring

If you listen to the last 5 minutes of Dr. Simring's testimony it is clear that both he and my psychiatric expert, Dr. Anekstein, are giving their expert opinion on the CAUSE OF MAJOR DEPRESSION, not the cause of RSD.

Dr. Miller gives her opinion as to my ability to work based on the RSD and major depression symptoms and disabilities of 2 years out from work for these. She never comments on the cause of anything other than my job loss.

This supports my contention that the testimony I want to exclude has no purpose in this appeal <u>other than to confuse</u>.

Sincerely,
Bernardine Greene (Appellant Pro se)
cc: Ms.Foss/Team3 Appellate Court

APPENDIX O

RELEVANT EXERPTS FROM APPELLANT'S 3/28/96 LETTER TO THE CASE MANAGER

Ms. Sandra Foss, Team 3
c/o Superior Court of New Jersey
Appellate Division CN006
Trenton, New Jersey 08625
(CERTIFIED MAIL #P 234 801 466)

March 28, 1996

Re: Docket# A-006425-94T Greene v. Greenberg
denial of Motion No. M-003215-95

Dear Sandra,

As per our conversation today, I am going to start the process to file a motion for leave to appeal to the Supreme Court from the above appellate division order.

Sandra, my motion for abbreviated transcripts was denied because 'the expert testimony sought to be excluded is alleged to relate to issues other than damages, such as proximate cause.'.

It seems the adversaries, in 'loosely' using the term 'proximate cause', have confused the judges as to the very narrow focus of my appeal: the PROXIMATE CAUSE OF REFLEX SYMPATHETIC DYSTROPHY SYNDROME (RSD).

The testimony I wish to exclude does not deal with the PROXIMATE CAUSE OF RSD, but with the proximate causes of loss of job/career and the illness of major depression, both which occurred after I developed RSD and which I alleged

occurred as a result of RSD and the traumatic events it fostered.

In order to minimize their possible damage cost, should the defendants be found negligent and should their negligence be found to be the proximate cause of my disease of RSD; the defense tried to prove that I had psychological problems and work problems before developing RSD.

Neither my job performance nor psychological history prior to the development of RSD were ever indicated to be the proximate cause of RSD.

The 2 psychiatrists whose testimony I wish to exclude gave their expert opinion as to the proximate cause of the illness of major depression, not RSD. The employment expert (Dr.Miller) whose testimony I wish to exclude gave her opinion on the proximate cause of my job loss and on my future employability based on my long absences from work due to RSD and major depression..

I am going to continue to try to work this out with the defendant attorneys and I will send you copies of any correspondence I send to them.

Again, thank you for your patience
Sincerely,
Bernardine Greene (Appellant Pro se)
201-584-6326

APPENDIX P

APPELLANT'S 3/30/96 LETTER TO CO-DEFENDANT OPTIMUM'S ATTORNEY AFTER SHE FIRST SAW THE 2/15/96 BRIEF ON 3/29/96 AS SHE WAS NEVER COPIED BY MR.KUNDLA.

Mr. Mark Kundla
Bumgardner, Hardin & Ellis
March 30, 1996.

Re: Docket# A-006425-94T Greene v. Greenberg et al

Dear Mr. Kundla,

I recently learned that you responded to my motion to exclude the testimony of 3 expert witnesses. I never received a copy from you and asked the appellate clerk to forward a copy to me which I have just received.

You argue, as does defendant Greenberg's attorney Mr.Christie, against my request to exclude the testimony of 2 psychiatrists (Dr.Simring & Dr.Anekstein) and an employment expert (Dr.Miller) because these deal with my appeal issues of 'proximate cause'.

My appeal issues deal with only one very specific proximate cause: THE PROXIMATE CAUSE OF REFLEX SYMPATHETIC DYSTROPHY SYNDROME (RSD). This is, always has been, and always will be the only proximate cause issue brought up in this appeal. (ATTACHMENTs A1 & A2)

↘ Mark, you were present during the entire trial, as I was, and you are well aware that the testimony I wish to exclude has nothing to do with the PROXIMATE CAUSE OF RSD. It has to do with the proximate

cause of major depression and job loss; neither of which were ever allegeed to be a PROXIMATE CAUSE OF RSD.

I consistently argued that Dr.Greenberg was negligent in giving me an cortisone injection that was unwarranted and was given in an incorrect place on my foot. (ATTACHMENT B)

I claimed that the cortisone injection 2/16/89 RESULTED in the development of RSD and that as a result of developing RSD I:

- lost 1 yr. from work out on disability for treatment of RSD and complications from that treatment (7/89-6/90)
- developed the disease of Fibromyalgia as a result of treatment for RSD (9/90)
- was left permanently by my husband after 18 years of marriage shortly after these stressful times (11/90)
- developed the psychiatric illness of major depression and lost another year from work on disability for this (3/92)
- was forced to resign within 2 months after my return to work following this 1 year absence (3/93)

I CONTEND THAT NONE OF THE THESE EVENTS WOULD HAVE OCCURRED HAD I NOT DEVELOPED REFLEX SYMPTATHETIC DYSTROPHY SYNDROME

On the verdict form the jury was asked (ATTACHMENT C):

1) Was....Dr. Alan Greenberg negligent?? What is meant by negligent was made very clear by the judge during

deliberations when the jury asked to re-hear my charge.(ATTACHMENT B) The negligence was the administering of a cortisone injection regardless of whether it was unwarranted or given in the wrong location or both.

The jury answered 8-0 (unanimous) YES.

2) Was the negligence...of Defendant Dr.Alan Greenberg a PROXIMATE CAUSE OF THE DEVELOPMENT OF REFLEX SYMPATHETIC DYSTROPHY (RSD) ??

There were only 2 causes of RSD raised in the trial and both were physical injuries to the arch of my right foot. (ATTACHMENTs D & E) Neither my psychological nor work problems had anything to do with the proximate cause of RSD.

The jury answered 7-1 NO.

Deliberations ended here and never went on to consider the negligence of your client nor the cause of any of the things which I claim would not have occurred had I not developed RSD.

It is not my intention within the scope of this appeal to discuss the proximate cause for the diagnosis of the psychiatric illness of Major Depression (3/92) or loss of my job/career in 3/93, These occurred after the development of RSD and a year out on disability for its treatment and complications of that treatment and in no way were a cause of the RSD.

My appeal has to do SOLELY with the proximate cause of RSD. I would not be appealing the verdict if defendant Greenberg was not found unanimously negligent. I believe that the jury was unclear about the proximate cause of RSD for many reasons. It is the purpose of this appeal to prove that the only proximate cause of RSD was the cortisone injection and that the verdict in my trial represents a miscarriage of justice.

The testimony I wish to exclude is only relevant to the cause of my major depression and job loss and future employability. It is obvious that the testimony I have asked to exclude is totally irrelevant to the PROXIMATE CAUSE OF REFLEX SYMPATHETIC DYSTROPHY (RSD) and therefore irrelevant to the scope of this appeal. Forcing me to supply the transcribed testimony and copies serves no purpose except to cause me financial hardship and to add confusion so as to distract the court from the real and very simple focused issue of this appeal.

I am appealing to you this last time to please give your consent to support my request to exclude the testimony of Dr.Simring, Dr.Anekstein, and Dr.Miller.

Sincerely,

Bernardine Greene (Appellant Pro se)
201-584-6326
CC: Sandra Foss, Team 3 Superior Court of NJ Trenton
Mr.C.Christie Doughi and Hewit

APPENDIX Q

4/2/96 LETTER SENT DIRECTLY TO THE APPELLATE JUDGES BY DEFENDANT GREENBERG'S ATTORNEY

April 2, 1996

The Honorable James J. Petrella
Superior Court of New Jersey
Hackensack, New Jersey 07601-7015

Re: Greene v. Greenberg
Appellate Docket No.: A-006425-94T3
Motion No.: 003215-95 Our File No.: 4051

Dear Judge Petrella:

Following receipt of the enclosed Order, dated March 6, 1996, we received a letter from the plaintiff, pro se, forwarding copies of taped testimony from the original trial. This letter is also enclosed.

Plaintiff has twice applied to the Court for an Order to abbreviate the transcript of the trial. These motions have both been denied. As of this date, we have yet to receive a copy of the transcript of the entire trial. If the plaintiff continues to ignore the aforementioned Court Orders, respondent will be compelled to move for dismissal of the appeal. Respondents have a right to have the entire transcript of the trial for utilization ln this appeal.

Respectfully submitted,
DUGHI AND HEWIT
Christopher Christie

(with enclosures)
The Honorable Stephen Skillman, J.A.D.
The Honorable Naomi G. Eichen, J.A.D.
Bernadine Greene (certified and regular mail)

APPENDIX R

APPELLANT'S 4/10/96 LETTER TO THE APPELLATE JUDGES

The Honorable James J. Petrella
Judge, Superior Court of New Jersey
25 Main Street
Hackensack, New Jersey

April 10 1996

Re:Greene v. Greenberg et al
Appellate Docket No.:A-006425-94T3
Motion No. M-003215-95

Dear Judge Petrella:

Although I believe it is improper to correspond with you directly regarding this appeal; my adversary, Mr. Christie, has done so and therefore, in my defense, I am writing to you directly after discussing this situation with my case manager, Sandra Foss.

Your Honor, I have not been ignoring the court's decisions. I have spoken almost weekly with my case manager Ms.Foss since this appeal began last July and I recently spoke with Judy Bryant.

Based on my strong conviction that the testimony I wish to exclude has no relevance in this appeal except to confuse, and based on the information received from Ms.Foss and Ms.Bryant as to the options available to me, I have chosen to file a motion with the Supreme Court for leave to appeal from the appellate division order. I am presently in that process.(Attachment G)

Both the defendants' attorneys and the appellate court have argued and denied my motion because it is alleged that the testimony I want to exclude has to do with 'proximate cause'

Since neither addressed specifically the only proximate cause issue in my appeal, the proximate cause of RSD, I am continuing to argue this issue hoping someone will see past the smoke-screen the defense is trying to put up.

I believe my adversaries have taken advantage of the court's unfamiliarity with my case and my legal inexperience to confuse you to think that the testimony I wish to exclude is relevant to the only PROXIMATE CAUSE issue in my appeal: THE PROXIMATE CAUSE OF REFLEX SYMPATHETIC DYSTROPHY (RSD).

The testimony in question has to do with the proximate causes of DAMAGE issues (events claimed to have resulted from the development of RSD; not from defendant Greenberg's negligence); not specifically with the only proximate cause issue in my appeal: the PROXIMATE CAUSE OF RSD WHICH WAS CLAIMED TO BE THE DIRECT RESULT OF DEFENDANT GREENBERG'S NEGLIGENCE (Attachments A, B, C).

It is, and always has been, my intention to educate the court about my case; not confuse.

Very simply put: I claimed that defendant Greenberg was negligent in giving me a cortisone shot that resulted in the development of the disease of Reflex Sympathetic Dystrophy Syndrome (RSD). The following list of events

occurred after I got RSD (2/16/89) and I claimed none of these would have happened had I not developed RSD. I referred to these as DAMAGE ISSUES:

- I lost 1 yr. from work out on disability for treatment of RSD and complications from that treatment (7/89-6/90)
- I developed the disease of Fibromyalgia as a result of treatment for RSD (9/90)
- I was left permanently by my husband after 18 years of marriage shortly after these stressful times (11/90)
- I developed the psychiatric illness of MAJOR DEPRESSION and lost another year from work for this (3/92/)
- I WAS FORCED TO RESIGN FROM MY JOB OF 10 YEARS within 2 months after my return to work following this absence (3/93)

The testimony I wish to exclude pertains solely to the last two items in the above list: the diagnosis of Major Depression and the loss of my job. The proximate causes of these issues is addressed in the testimony I wish to exclude and has nothing to do with the cause of the neurological disease RSD.

Neither of these were ever alleged to be a cause of RSD. In my trial, the defense's RSD expert, Dr.Roschelle, said there were only 2 causes of RSD; either a twist to my right arch on 10/29/88 or the cortisone shot 2/16/89 (Attachment D)

I know that the testimony I wish to exclude is IRRELEANT to this appeal and I intend to use the resources available to educate the court that this is true and try to get the testimony excluded.

While I am going through this PROCESS of filing my motion with the Supreme Court, I continue to try to resolve this issue directly with my 2 adversaries and possibly avoid these motions. Therefore I responded to my adversaries' arguments to my motion. (Attachment F)

Again, I apologize for directly contacting your Honor and hope you will understand why I have done so.

Sincerely,
Bernardine Greene (Appellant Pro se)

cc:
The Honorable Stephen Skillman, J.A.D.
The Honorable Naomi G. Eichen, J.A.D.
Sandra Foss, case manager
Mr.Christie c/o Dughi and Hewitt
Mr.Kundla c/o Bumgardner Hardin & Ellis

APPENDIX S

PETITIONER'S 10/8 96 LETTER SENT TO THE NEW CASE MANAGER AFTER RECEIVING CROSS-MOTION TO DISMISS

Ms Laurie Gambacorta, Team 3
c/o Superior Court of New Jersey
Appellate Division CN006
Trenton, New Jersey 08625

October 8, 1996

Re: Docket# A-006425-94T3 Greene v. Greenberg

Dear Ms. Gambacorta,

I am very concerned about the present situation of my pending appeal.

I am a pro se appellant due to financial necessity. I am, as probably is any pro se appellant, inherently disadvantaged as opposed to my professional adversaries regarding experience, financial support and having available the help of assistants. I am unemployed and on social security disability and my main source of income is a monthly disability check of $1084.00. I net about $12000.00 a year. Over 7 years ago, shortly before I was the victim of defendant Greenberg's proven negligence, I had just gotten a raise to a yearly salary of $38,000.00

The disease of RSD, which I alleged was caused by defendant Greenberg's proven negligence, has worsened over this past year and I have seen several RSD specialists over the past 7 months trying to resolve these scary and disabling symptoms. Last week,

nationally recognized RSD expert, Dr. Robert Schwartzman, told me that he advises that I go into the hospital for seven days to try a possible treatment for my worsening disability due to RSD.

I am not asking you or anyone at the court to feel sorry for me. However, I am asking that the Court consider the reality of my situation and do whatever they can to insure that this will be a 'fair fight'.

I know that I have truth on my side and that my arguments are valid. All my arguments to the court contain statements and allegations that I can support with a MAJORITY of the relevant trial evidence and I have always supplied an example from the trial testimony to support my arguments.

However, the court's lack of familiarity with my trial combined with my unskilled ability to argue legal matters without an attorney or years of experience, allows my adversaries to cloud the truth and distract the reader from the very limited focus of my appeal by their skillful use of partial truths and misleading information .

Ms. Gambacorta, I filed this appeal 7/95 and Sandra Foss was my case manager from then until 5/10/96. I was fortunate that Ms. Foss was well-informed and reliable and readily available and I spoke to her almost weekly. I relied on Sandra to steer me in the right direction so that I did everything I was supposed to do as required by the law since I am unfamiliar with court and appeal law. I

found her very reliable and I trusted her. Ms. Foss left last May.

After Sandra left last May, Pat Linkas handled my case for 3 weeks.

From 6/12 - 8/10 Lorraine Regerio was my case manager. From 8/10 and after I was unable to get any response from Lorraine.

> On 8/13/96 I called her regarding correspondence I sent to her in July and was told that she was on vacation and would be back 8/19. 8/26 and 9/3 I wrote to Lorraine and never go any replies. I called 9/6 and 9/9 and left messages for her. Again, no response.

On 9/10 I called and was told by Pat Linkas that Lorraine had left and that as of 9/12 you would be my new case manager.

On 9/16 I sent you a letter of introduction and a history of my trial and appeal so that you could familiarize yourself with my case.

It is my belief that my best asset in this fight is the fact that truth is on my side. After this, my best asset is my case manager.

↘ <u>Much has happened over the last 5-6 weeks that I need assistance in handling.</u>

Since Sandra stopped being my case manager, I have not been afforded the opportunity to establish a consistent

relationship with a case manager upon whom I could depend and I desperately need this. I am hopeful that you will be able to assist me similarly to the way that Ms. Foss did.

In the following pages I will list my concerns and questions for your review. I would appreciate it if you would call me after you review this information so that I can get the input I need to correctly go forward.

Sincerely,

Bernardine Greene, pro se appellant
70 Parkview Drive
Succasunna, NJ 07876
201-584-6326

The clock is ticking on the following and I need to speak to you regarding my options regarding time:

Since 8/95 I have been trying to get permission to omit the testimony of 3 witnesses from use in my appeal. These witnesses gave their expert opinion as to the proximate cause of damages which occurred 1-3 years after the proven negligence and the disease known as 'RSD' that was alleged to be the direct cause of this negligence. This testimony is lengthy and the time, money, and energy needed to produce copies for the court and my adversary are very taxing to me.

12/22/95 the Appellate Division denied my first motion to abbreviate transcripts including my request for a limited remand to the trial judge.

3/3/96 they denied my request for reconsideration because it was alleged by my adversary that this testimony dealt with issues other than damages, namely proximate cause.

> 'The Court notes that the expert testimony sought to be excluded is ALLEGED TO RELATE TO ISSUES OTHER THAN DAMAGES, such as proximate cause.'
>
> Our denial is without prejudice to an application to the trial court in accordance with R. 2:5-3 (c) (2)

This testimony did have to do with proximate cause, but only the proximate

cause of damages which occurred 1-3 years after the negligence and development of the disease of RSD.

This testimony is irrelevant since none of my appeal issues deal with damages and the jury never addressed damages at the time they reached the verdict. Therefore expert opinion as to the 'proximate cause of damages' are not relevant to any of my appeal issues. My appeal issues deal with either:

- my allegation that the negligent cortisone shot administered by defendant Greenberg could be the ONLY probable proximate cause of the physical disease of RSD

- my allegation that my case was prejudiced due to plain error and other court decisions

I called my case manager and asked how I could continue to fight this and was advised that my next step would be to motion the Supreme Court for leave to appeal the lower court's decision.

note** - At the time I spoke with my case manager she didn't advise me that paragraph #2 of the court's denial was giving me permission to go to the trial judge for a ruling on my motion. I wasn't aware that this was what was meant by paragraph #2 until I read Mr. Christie's 8/96 argument. CAN I AND SHOULD I GO BACK TO THE TRIAL JUDGE ON THIS????

I submitted 2 motions to the Supreme Court 5/10/96

a - motion to file as if within time
b - motion for leave to appeal the lower court's denial of my motion to abbreviate the testimony of 3 expert witnesses which is totally irrelevant to my appeal issues.

In July I was told to file a motion for stay of Appellate proceedings if I wanted to request that my appeal process await the final determination by the Supreme Court on the above. I did this.

↘ IT IS AT THIS POINT THAT I STOPPED GETTING ANY RESPONSE TO MY CALLS OR CORRESPONDENCE DIRECTED TO MY CASE MANAGER

I sent the following to Lorraine Regerio and never got any response. Here are my questions regarding correspondence to Lorraine this past July and August:

- 7/31/96 I made a request, per Lorraine's instructions, to use certain exhibits for my appeal and oral argument. Do you show that this was received and what is the present status on this?

- 8/23/96 I sent Lorraine a copy of the transcript request form for proceedings, other than testimony, for the following dates: 4/3/95, 4/5/95 and 4/6/95. Do you show this as received? FYI: I spoke to

Terrence Headd today at court reporters; he said it's being worked on.

- 8/30/96 I sent a letter to Lorraine amending my 5 proposed issues previously submitted by adding ISSUE 6 and rewording the other issues for purposes of clarity. I asked Lorraine to advise me if they were acceptable before I forwarded copies to my adversaries. Did Lorraine receive this letter and, if so, please advise if this was proper and acceptable so that I can send an updated list to my adversaries.

- 9/3/96 I sent Lorraine a letter informing her that I was working on a motion to supplement the record with information that was available to me and my attorney prior to trial and was not used and could have had an affect on the outcome of my trial and will be of substantial benefit to proving some of my appeal arguments. I also posed several questions I asked her to answer. (COPY OF THIS LETTER IS ENCLOSED)

On 8/27 the my motion to stay appellate proceedings was denied by Judge Michels, This was a new judge who had never previously handled any of my motions and, had I known this, I would have tailored my argument differently. So, on 9/24/96 I submitted my motion for reconsideration of this denial with more

information than I submitted the first time.

10/4/96 I received my adversary's, Mr. Christie', argument that the Court should not allow a stay of appeal proceedings to wait until the Supreme Court decision.

Also included was a motion to dismiss my appeal. Mr. Christie argues that my appeal should be dismissed because in a year and 1/2 I have failed to provide all the transcripts or file a brief on appeal specifying my issues on appeal.

When I filed my appeal last July '95 I also submitted my proposed issues which continue the same today except for amending this document 9/95 with addition of ISSUE#5 and 9/96 with the addition of ISSUE#6.

A month after I filed my appeal, I started the process of trying to get permission to exclude lengthy and irrelevant testimony from use in this appeal and this has delayed the movement of my appeal.

In pursuing getting this irrelevant testimony omitted from use in my appeal, I have always followed the instructions of my case manager.

10/4/96 I received a response from the Supreme Court approving my motion to file as within time (M-206) and denying my leave to appeal (M-207), dated 10/2/96.

10/5/96 I received a copy of Mr. Christie letter to the Appellate Court telling them to ignore my motion for reconsideration of stay of Appellate proceedings because it was now moot because the Supreme Court denied my leave to appeal.

↘ THESE ARE MY QUESTIONS CONCERNING EVENTS AUGUST'96 TO NOW:

- What is the chance that my appeal would be dismissed and what is my best defense against this? What is the time limit on answering a motion initiated by my adversary

- I am informed that I can motion for clarification and reconsideration of my motion to the Supreme Court and I have 10 days from the date of their denial to do so. Does this mean I must post-mark it by 10/12 or that it must be received by the Court by 10/12 ?? I would like to motion for reconsideration to the Supreme Court. How do I ask the Appellate court to continue to decide on my motion for reconsideration regarding stay of appellate proceedings on its own merit and not be influenced by the recent letter from Mr. Christie claiming this motion is now moot ?

- If the Appellate court denies my motion for stay of appellate proceedings then how much time will I be allowed to get the money I need to pay for ordering the remaining transcripts and make the copies and furnish all this to the Appellate division ?

- I have related my health concerns to Ms.Foss on several occasions in the past. I am concerned that my continuing health problems will interfere with my ability to handle writing my brief in a timely manner. If my health situation negatively impacts my performance as my advocate in this appeal, what options do I have to petition for an extension of time ?

I need help co-ordinating these separate but related arguments. I need to know what my options are and what my time constraints are so that I can prioritize my tasks in the best way to assure that I have a fair chance in this appeal.

In addition, in arguments submitted recently by defendant Greenberg's attorney, Mr. Christie, I have been portrayed as wasting time with frivolous motions and have been cited for not complying with the Court's rules and instructions.

Ms. Gambacorta, I have consistently followed instructions given to me by my case managers in handling this appeal and these motions (Sandra Foss can support this) Here are some examples:

1 - Mr. Christie says that I did not follow the court's instructions in their 3/6/96 denial and follow up with the trial judge. When I originally filed my motion to abbreviate transcripts, 10/95,I requested a limited remand to the trial judge. That was denied

12/22/95. When the court denied my motion for reconsideration on 3/6/96 I was not informed by my case manager that, as part of this denial, I was given permission to go to the trial court. I didn't understand this until 8/96 when it was discussed in an argument filed by my adversary.

2 - Mr. Christie also claims that my motion for reconsideration of stay of proceedings should not be considered because the motion must be filed within 10 days and I filed it in almost 30. On 9/10 I spoke with Pat Linkas and asked her what my time limit was on filing a motion for reconsideration and she told me there was no limit and that I should just get it in ASAP. Due to health concerns and visits to doctors I didn't put undue stress on myself to get this out based on Pat's information.

What is the best way I can handle this situation so that I minimize the chances of being misinformed and protect myself if I do act based on misinformation ?

I'd appreciate it if you would discuss this with me. Ms. Gambacorta, I imagine I am not a 'fun' assignment but I need your assistance and would appreciate it if you would contact me to discuss this since I don't want the 'time factor' to be a reason that my appeal is dismissed.